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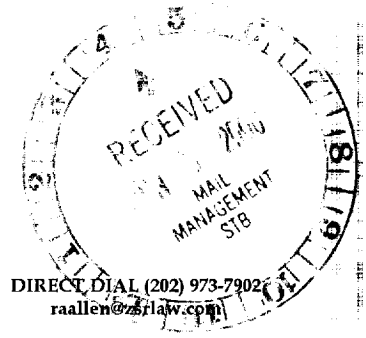
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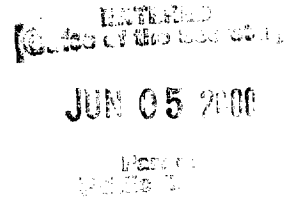
RICHARD A. ALLEN



June 5, 2000

**BY HAND**

Surface Transportation Board  
Office of the Secretary  
Case Control Unit  
Attn: STB Ex Parte No. 582 (Sub-No. 1)  
1925 K Street, N.W.  
Washington, D.C. 20423-0001



**Re: Ex Parte No. 582 (Sub-No. 1) – Major Railroad Consolidation Procedures**

Dear Secretary Williams:

Enclosed for filing in the above-referenced matter are an original and 25 copies of the Reply Comments of the Texas Mexican Railway Company. Also enclosed is a 3-1/2" computer disk in WordPerfect 5.1 format, which is capable of being read by WordPerfect for Windows 7.0.

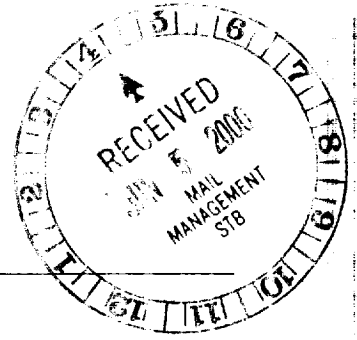
Sincerely,

  
Richard A. Allen

Counsel for the Texas Mexican  
Railway Company

Enclosures

Before the  
SURFACE TRANSPORTATION BOARD



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Ex Parte No. 582 (Sub-No. 1)

MAJOR RAIL CONSOLIDATION PROCEDURES

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Public Record

**REPLY COMMENTS OF THE TEXAS MEXICAN RAILWAY COMPANY**

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*Attorneys for the Texas Mexican  
Railway Company*

June 5, 2000

Before the  
SURFACE TRANSPORTATION BOARD

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Ex Parte No. 582 (Sub-No. 1)

MAJOR RAIL CONSOLIDATION PROCEDURES

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**REPLY COMMENTS OF THE TEXAS MEXICAN RAILWAY COMPANY**

Pursuant to the Board's Advance Notice of Public Rulemaking (served March 31, 2000) ("ANPRM"), the Texas Mexican Railway Company ("Tex Mex") submits the following reply comments to respond to initial comments filed by a number of parties addressing "cross-border" issues that the ANPRM indicated the Board would consider in this proceeding. As discussed below, some of the relatively few parties who addressed cross-border issues in their initial comments are proposing changes to the Board's major rail consolidation procedures that would serve no legitimate purpose other than to impose burdensome requirements solely on transactions involving non-U.S. entities. These proposals have no foundation in the laws governing railroads and this Board's jurisdiction, are distinctly at odds with the spirit of the North American Free Trade Agreement, and would in some cases intrude on the sovereignty of Mexico and Canada.

In its initial comments, Tex Mex noted that, since enactment of the first Interstate Commerce Act in 1888, Congress has deliberately placed no restrictions on ownership of interests in railroads operating in the United States based on citizenship or nationality. This complete freedom of cross-border ownership and flow of capital has contributed to the development of an integrated North American rail system that is the envy of the world. The

spirit of free trade reflected in U.S. railroad statutes was greatly reinforced by NAFTA. Tex Mex noted that some of the Board's comments in the ANPRM suggested that the Board might be considering departures from the more than century-old policy of free cross-border ownership and flow of capital, and it urged the Board to propose no such changes.

Relatively few of the parties submitting initial comments in response to the ANPRM addressed cross-border issues at all, and fewer still suggested any changes to the Board's and the ICC's longstanding approach to such issues. Some parties, however, have proposed changes that Tex Mex submits are contrary to the statutes administered by the Board and to NAFTA and are unwarranted as a matter of policy.

The Board's jurisdiction is limited to rail transportation in the United States and to carriers providing such transportation. 49 U.S.C. § 10501(a)(2). *See, e.g., Van Blaricom v. Burlington Northern R.R. Co.*, 17 F.3d 1224, 1227 (9th Cir. 1994). Accordingly, when considering a rail consolidation involving non-U.S. railroads or entities, it may be reasonable and appropriate for the Board to consider aspects of the other country's laws or conditions to the extent they may be relevant to the impact of the transaction in the United States. For example, if some aspect of Mexican or Canadian law creates a risk to railroad safety or railroad competition or service in the United States, that would be an appropriate matter for the Board to consider. But there is no legitimate reason for the Board to consider, for example, whether, because of Mexican or Canadian laws or practices or because of the way the proposed transaction is structured, a particular consolidation may cause congestion, or reduce competition, or harm the environment, in Mexico City or Edmonton, Alberta. Those are matters for Mexican and Canadian authorities to consider, but not U.S. authorities. To require merger applicants to address those issues and to require the Board to analyze them would impose substantial burdens

on applicants and the Board in cross-border cases that would serve no legitimate purpose; the only purpose would be to make transactions involving non-U.S. entities more difficult than transactions involving only U.S. entities. Such requirements would also intrude on the sovereignty of Mexico and Canada and on the jurisdiction of their transportation, environmental and other agencies.

Yet a number of the comments in this proceeding urge the STB to do precisely that. For example, CSX Transportation, Inc. would have cross-border merger applicants include a description of foreign regulations addressing the potential environmental impacts of a given rail merger. Such a requirement would not be relevant to any issue the Board should be concerned with – namely, the impacts of a merger on the U.S. environment, which are governed exclusively by U.S. environmental laws. Such a requirement would simply intrude on the sovereignty of the foreign country and would invite the Board to embark on politically charged examinations of non-U.S. environmental policies. The same is true with respect to the labor, safety and other laws of foreign countries. If the United States is to respect the sovereignty of its neighbors, its agencies should not be second-guessing the effectiveness or wisdom of its neighbors' laws, except to the extent they are clearly shown to have a direct effect in the United States.

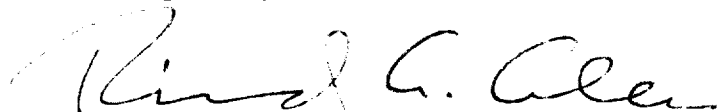
As another example, Union Pacific Railroad Company urges the Board to require applicants in a transaction involving a non-U.S. railroad to submit to the Board operating plans covering the operations of the entire consolidated system, including operations outside the United States. But the Board has no legitimate interest in how a railroad is going to operate in Canada or Mexico, except insofar as those operations affect operations in the United States. The Board should not impose burdensome requirements on cross-border transactions merely because of some unlikely possibility that they may be relevant to effects in the United States; instead, it

should require the submission of information concerning extraterritorial operations only when they will clearly have a significant effect in the United States. Indeed, in those instances, the Board should require that the party raising such a cross-border operating impact bear the burden of proving that such an impact is likely to occur.

In the same vein, the Department of Agriculture and others urge that, in transactions involving non-U.S. entities, the Board should consider the impacts on exports or imports of grain, lumber and other products, and should consider alleged impacts on national defense. As aptly noted by Burlington Northern Santa Fe Railroad, with whose comments on cross-border issues Tex Mex generally agrees, non-U.S. entities have controlled railroads operating in the United States for more than a century without adverse effects on U.S. export trade or the national defense, and there is no reason to believe that those interests require a more restrictive approach now.

In sum, Tex Mex submits that no changes to the Board's existing major rail consolidation procedures are needed or warranted to address cross-border issues. Most of the parties who submitted initial comments appear to hold the same view, inasmuch as they offered no comments at all on the cross-border issues mentioned in the ANPRM.

Respectfully submitted,



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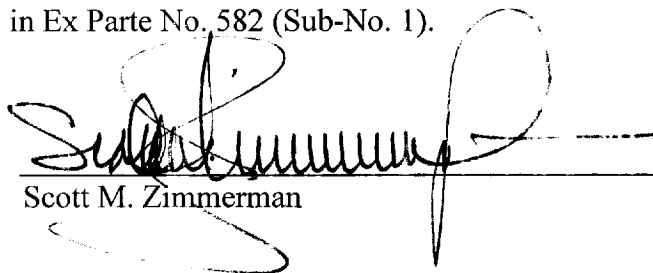
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*Attorneys for the Texas Mexican  
Railway Company*

June 5, 2000

**CERTIFICATE OF SERVICE**

I hereby certify that on this 5th day of June, 2000 a copy of the foregoing "Reply Comments Of The Texas Mexican Railway Company" was served by first class mail, postage prepaid, on all known parties to the proceeding in Ex Parte No. 582 (Sub-No. 1).



Scott M. Zimmerman